

Applicant requests the Examiner 1) identify the claims associated with each species, and 2) state a prima facie case on why there is a serious burden on the Examiner not to make a search on the present claims.

35 U.S.C. 121 states: “[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions [emphasis added].” 37 CFR 1.142 states “[i]f two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted[emphasis added]...” Hence the question of whether or not there are independent and distinct inventions must be based on the claims. In response to the Examiner’s careful analysis of all of the claims and his determination of the alleged 3 distinct inventions, Applicants request the Examiner share this information with the Applicants and give the claims associated with each species.

It appears the Office Action format is taken from MPEP 809.02(a). It also appears that the Examiner has designated the distinct species by figures without designating the claims associated with the species. Without the designation of which claims are in which species, if the Applicant disagrees with the Examiner on the claims being distinct, the Applicant is put in the awkward position of first guessing at what claims the Examiner believes are distinct and then arguing against their own guess. This causes undue expense and time for the Applicant. Thus, because from the above statute and CFR requirement that the Examiner make a determination on whether there are two or more independent and distinct inventions based on the claims, Applicant requests at least a rationale for the Examiner not specifying the claims associated with each alleged species.

In addition, even though the inventions may be either distinct or independent, the Examiner must show there is a serious burden if the claims are not restricted.

MPEP 803 states:

an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent... or distinct If the search and examination of an entire application can be made without serious burden, the examiner must

examine it on the merits, even though it includes claims to independent or distinct inventions.

.....
For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.

As the Examiner must do a search on the generic claims which cover all three species, the Applicant requests an explanation of why there is a serious burden on the Examiner.

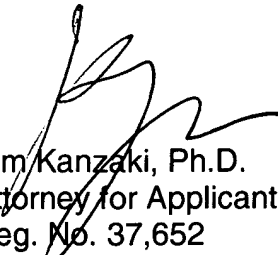
However, solely to fulfill the requirements of a responsive reply, Applicant provisionally elects with traverse to prosecute Species I of Figure 1B, Claims 2-18 and generic claims 1, 22, and 31. Applicant hereby withdraws Claims 19-21 and 23-30.

CONCLUSION

All claims should be now be in condition for allowance and a Notice of Allowance is respectfully requested.

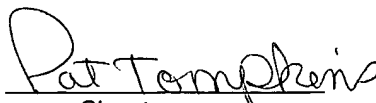
If there are any questions, the applicant's attorney can be reached at Tel: 408-879-6149 (Pacific Standard Time).

Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on December 29, 2005.

Pat Tompkins
Name


Signature